

April 13, 2009

Via: Federal eRulemaking Portal
UPS Overnight

Public Comments Processing
Attn: FWS-R6-ES-2008-0127
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

Re: Status Review of Wyoming Pocket Gopher to Determine if Listing is Warranted

Dear Sir or Madam:

Anadarko Petroleum Corporation (Anadarko) submits the following information in response to the United States Fish and Wildlife Service's (USFWS or "the Service") request for scientific and commercial information regarding the Wyoming pocket gopher (*Thomomys clusius*). On February 10, 2009, the Service initiated a status review of the species based on a 90-day finding that an August 7, 2007, petition from Biodiversity Conservation Alliance and Center for Native Ecosystems (collectively "Petitioners") presented substantial information that listing the Wyoming pocket gopher as threatened or endangered under the Endangered Species Act of 1973 (ESA), as amended, may be warranted. 74 Fed. Reg. 6558 (February 10, 2009). The Service has also stated its intention to make a determination on critical habitat if, and when, it initiates a listing action.

According to the Service, the Wyoming pocket gopher has potential habitat in Sweetwater and Carbon Counties, Wyoming and possibly northern Colorado. 74 Fed. Reg. at 6560; *see also* BEAUVAIS AND DARK-SMILEY, Species Assessment for Wyoming pocket gopher (BLM, 2005), pg. 3. Anadarko has substantial interests in these counties that could be impacted by a decision to list. In particular, Anadarko through its merger with Union Pacific Resources in 2000 obtained over 950 thousand acres of surface and more than 4 million acres of mineral ownership. In addition, Anadarko holds federal and state oil and gas leasehold interests in Sweetwater and Carbon counties.

Anadarko's oil and gas activities on federal lands are subject to land management plans issued by the Bureau of Land Management (BLM) and the United States Forest Service (Forest Service). In addition, Anadarko's oil and gas operations on federal lands require permits from federal agencies, such as the BLM. If the Wyoming pocket gopher is listed under the ESA, federal agencies could require additional mitigation measures beyond those already imposed or could preclude operations in some areas to protect the Wyoming pocket gopher and their habitat.

Anadarko may also be subject to additional permitting requirements for its existing and proposed projects pursuant to the ESA and would be subject to potential liability under the ESA for actions potentially affecting the Wyoming pocket gopher. Because of delays in permitting and mitigation requirements, listing the Wyoming pocket gopher may affect Anadarko's ability to meet its lease commitments with federal, state, and fee lessors.

Anadarko now presents the following information in response to the Service's request for information on the Wyoming pocket gopher.

LEGAL STANDARD

To determine whether a species warrants listing, USFWS must consider five factors:

- a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- b) Overutilization for commercial, recreational, scientific, or education purposes;
- c) Disease or predation;
- d) The inadequacy of existing regulatory mechanisms; or
- e) Other natural manmade factors affecting its continued existence.

16 U.S.C. 1533(a)(1). If the Secretary concludes that any one of these factors demonstrates a species is threatened or endangered, USFWS must list the species. USFWS must base its listing decision "solely on the basis of the best scientific and commercial data available." 16 U.S.C. § 1533(b). When the Service is presented with conflicting scientific information, it has discretion to choose the evidence on which to rely. *See, e.g., Pac. Nw. Generating Coop. v. Brown*, 822 F. Supp. 1479, 1505 (D. Or. 1993), *aff'd* 38 F.3d 1058 (9th Cir. 1994). In this case, none of the information currently available supports listing of the Wyoming pocket gopher is warranted under any of the factors.

It is well-settled that the Service must rely on the best available scientific data, not perfect scientific data. *See Sw. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 61 (D.C. Cir. 2000); *Greenpeace Action v. Franklin*, 14 F.3d 1324, 1336 (9th Cir. 1993). It is also well-settled that the Service may rely on the best available data, even if such data is inconclusive. *See Sw. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 61 (D.C. Cir. 2000). The ESA does not require the Service to conduct independent studies before making listing determinations. *Sw. Ctr. for Biological Diversity v. Babbitt*, 215 F.3d 58, 60 (D.C. Cir. 2000). Finally, to the extent Petitioners present conflicting information, the Service is entitled to rely on the opinions of its experts to adopt one conclusion over another. *See, e.g., Ctr. for Biological Diversity v. Norton*, 411 F. Supp.2d 1271, 1276 (D. N.M. 2005) (quoting *Defenders of Wildlife v. Babbitt*, 958 F. Supp. 670, 678-79 (D. D.C. 1997)).

Whether some gaps in the regulatory structure may exist is irrelevant so long as “current regulations, from whatever source, are sufficient to keep a species from becoming threatened.” *Or. Natural Res. Council v. Daley*, 6 F. Supp.2d 1139, 1156 (D. Or. 1998).

The Service may consider conservation efforts and protective measures occurring on public lands when evaluating the existing regulatory structure. *See Or. Natural Res. Council v. Daley*, 6 F. Supp.2d 1139, 1156 (D. Or. 1998); *see also Policy for Evaluation of Conservation Efforts When Making Listing Decisions*, 68 Fed. Reg. 15,100, 15,114 (Mar. 28, 2003). Petitioners do not establish that existing regulatory mechanisms on federal land are inadequate. To the contrary, the federal agencies have a menu of regulatory requirements and obligations that ensure the future protection of the species.

These comments will focus upon the first factor utilized to list species as threatened or endangered under the ESA—potential threats to the range of a species—because that is the only criterion identified by the Service as potentially supporting a listing determination for the Wyoming pocket gopher. 74 Fed. Reg. 6558, 6560 – 63. According to the Service, the Petition fails to demonstrate a potential threat to the Wyoming pocket gopher based on: (1) overutilization for commercial, scientific, or educational purposes; (2) disease or predation; (3) inadequacy of existing regulatory mechanisms, or (4) other natural or manmade factors affecting the species’ continued existence including climate change. *Id.* Rather, the Service indicates that the primary threat to the Wyoming pocket gopher is potential threats to the species’ habitat from oil and gas development. *Id.* at 6563.¹

Overall, the Petition offers little concrete information demonstrating the need to list the Wyoming pocket gopher as threatened or endangered under the ESA. The Petition is filled with assertions regarding the Wyoming pocket gopher based on little, if any, credible scientific information. For example, on page 13 of the Petition the Petitioners allege the BLM does not recognize the Wyoming pocket gopher as a species of concern or recognize the possibility of the species in the Rawlins area known as the Great Divide Resource Area. As the Service is aware and as described in more detail below, the BLM has included the Wyoming pocket gopher on its list of sensitive species since 2001. Additionally, the recently completed Resource Management Plan for the Rawlins Field Office recognizes that Wyoming pocket gophers may be found in the area and imposes special management prescriptions to protect all BLM Wyoming Sensitive Species. *See Part IV* below. Further, on page 15 of the Petition, the Petitioners allege historic population declines; while on page 6 Petitioners admit that historic population numbers are not available. The Petition is based on broad conclusions supported only by information regarding other pocket gopher species, the Northern pocket gopher (*Thomomys talpoides*) and the Idaho pocket gopher (*Thomomys idahoensis*). The Service cannot list the Wyoming pocket gopher

¹ Although not supported by sufficient information in the Petition, the Service has elected to consider the susceptibility of the species to stochastic events to its small population size and limited distribution. 74 Fed. Reg. at 6563.

based solely on general conclusions drawn from similar species or the inaccurate information contained in the Petition.

THREATS ANALYSIS

I. Listing is Not Warranted Due to the Present or Threatened Destruction, Modification, or Curtailment of Wyoming Pocket Gopher Habitat or Range.

Petitioners fail to demonstrate that habitat loss generally threatens the Wyoming pocket gopher. Notably, the Petition laconically suggests that oil and gas development is threatening the range and habitat of the Wyoming pocket gopher. This statement, however, is not supported by actual information or analysis. The Petitioners merely note that the potential habitat of the species may overlap existing oil and gas fields and existing federal oil and gas leases, but fail to provide any information, even anecdotal, suggesting that the species has actually been impacted or harmed by oil and gas development.

Further, the Petitioners fail to demonstrate any actual or threatened loss of habitat attributable to oil and gas development. They provide absolutely no indication that oil and gas development has impacted Wyoming pocket gopher habitat, or that such impacts to habitat have impacted population numbers or distribution. The mere possibility of oil and gas development does not demonstrate the species or its habitat will be impacted. Further, the potential loss of some habitat does not demonstrate that listing the species is warranted or necessary. See *Defenders of Wildlife v. Kempthorne*, 535 F. Supp.2d 121, 129 (D. D.C. 2008) (“The ESA permits some habitat loss, so long as that loss does not rise to the level of a threat.”); *Tucson Herpetological Soc’y v. Kempthorne*, No. 04-CV-00075-PHX-NVW, 2007 WL 2023477, at *5 (July 12, 2007). Instead, to establish that destruction or modification of habitat warrants listing, petitioners must evaluate the impact of the lost range or explain the significance of the lost habitat. E.g., *Tucson Herpetological Soc’y v. Kempthorne*, No. 04-CV-00075-PHX-NVW, 2007 WL 2023477, at *3 (July 12, 2007); see also *Defenders of Wildlife v. Norton*, 258 F.3d at 1143 (noting that healthy populations may exist despite a loss of a substantial amount of habitat). At least one study indicates that a “substantial amount of generally undisturbed habitat probably remains” to support the Wyoming pocket gopher. See KEINATH AND BEAUVAIS, Wyoming pocket gopher (*Thomomys clusius*) A Technical Conservation Assessment, Wyoming Natural Diversity Database (2006), pg. 21. The Petitioners have failed to demonstrate a loss of actual habitat, or demonstrate that habitat modification has adversely impacted Wyoming pocket gopher populations.

Petitioners’ general statements that habitat loss is occurring also fail to distinguish the quality of the lost habitat. Petitioners do not demonstrate that there are “any attributes or specific uses of the lost habitat that [makes] it significant to the survival of the species in any particular geographic area.” *Tucson Herpetological Soc’y v. Kempthorne*, No. 04-CV-00075-PHX-NVW, 2007 WL 2023477, at *5 (July 12, 2007); see also *Defenders of Wildlife v. Norton*, 258 F.3d at

1143. Wyoming pocket gophers require fairly small areas in which to exist and thus it is not likely that areal requirements are a major limiting factor for the species. BEAUVAS AND DARK-SMILEY, pg. 21. Given the small area inhabited by the species, and given the environmental review process used to approve oil and gas development, including on-site review by BLM experts, oil and gas operations may have little or no effect on Wyoming pocket gophers or their habitat. Through simple avoidance measure, pocket gophers and their habitat can be easily protected at the site-specific approval stage.

Moreover, Petitioners' general statements ignore that although some habitat loss may occur, Wyoming pocket gophers are being protected on public lands.² As noted in the 90-day finding, the Wyoming pocket gopher is identified as a United States Forest Service Region 2 and the BLM Wyoming Sensitive Species, which entitles the species to special protections on all federal lands within the potential range of the species. BLM Manual 6840 Special Status Species Management § 6840.2.C (Rel 6-125 12/12/2008); Forest Service Manual 2600, Chapter 2670.22 (WO Amendment 2600-2005-1 09/23/2005). As discussed in more detail in part IV below, the recently completed Record of Decision and Approved Rawlins Resource Management Plan (BLM Dec. 2008) (Rawlins RMP) contains special protections for all BLM Wyoming Sensitive Species, including the Wyoming pocket gopher. The possibility that lost habitat may be poor habitat, when viewed against the fact that habitat is being protected on federally managed lands, suggests that habitat loss does not threaten the existence of the Wyoming pocket gopher. See *Defenders of Wildlife v. Kempthorne*, 535 F. Supp.2d 121, 129 (D. D.C. 2008).

The Petition further suggests that oil and gas development may lead to an increase of noxious weeds within the habitat of the Wyoming pocket gopher and that said introduction may impact the species. The Petition, however, fails to provide any support for this position. In fact, the only evidence cited by the Petition is a study suggesting that noxious weeds may impact an entirely separate species, the Gunnison prairie dog (*Cynomys gunnisoni*), with different habitat and needs. Further, the recently completed Wyoming Pocket Gopher (*Thomomys clusius*) A Technical Conservation Assessment (Technical Assessment) indicates that noxious weeds are not a current threat to the species. See KEINATH AND BEAUVAIS, pg. 23. The Petitioners' unsubstantiated assertions to the contrary must be disregarded. Similarly, the Petition fails to provide any evidence to suggest the use of herbicide is or even may impact Wyoming pocket gopher populations. Rather, the Petitioner offers only general assertions regarding impacts to other species outside of the known range of the Wyoming pocket gopher. Further, the use of herbicides on federal lands is only allowed under specific conditions to ensure "unwanted loss of desirable flora and fauna." Rawlins RMP, Appd. A, pg. A19-3.

² It is appropriate to evaluate the amount of land on which habitat is preserved through regulatory mechanisms to conclude that habitat loss does not threaten the existence of the Wyoming pocket gopher. *Defenders of Wildlife v. Kempthorne*, 535 F. Supp.2d 121, 129 (D.D.C. 2008); *Ctr. for Biological Diversity v. Norton*, 411 F. Supp.2d 1271, 1279-80 (D. N.M. 2005).

Accordingly, Petitioners have not established that habitat loss threatens the species. Similarly, Petitioners also fail to establish that individual causes of habitat loss threaten the Wyoming pocket gopher.

II. Listing is Not Warranted Due to Overutilization for Commercial, Recreational, Scientific, or Education Purposes.

As indicated by the Service, the Petition has failed to present sufficient information to demonstrate that a listing is warranted because of overuse for commercial, recreational, scientific, or educational purposes. 74 Fed. Reg. 6558, 6561. Contrary to the unsupported allegations contained in the Petition, the portion of Wyoming where the species is expected to be located is extremely remote and unpopulated; residential and commercial development will not have an impact on the species. The limited relevant literature suggest that only a small amount of habitat may have been lost to urbanization or other disturbances such as pipeline and road construction. KEINATH AND BEAUVAIS, pg. 21. Similarly, the portion of Carbon and Sweetwater Counties where the Wyoming pocket gopher resides does not have significant farmland or farming operations that may impact the species. No studies have been conducted demonstrating that anthropogenic activities negatively impact Wyoming pocket gophers. Further, even the studies cited by the Petition indicating anthropogenic activities may impact some species of pocket gophers were not conducted “in or near the range of the Wyoming pocket gopher.” *See* KEINATH AND BEAUVAIS, pg. 22. As such, these studies fail to demonstrate that anthropogenic activities will adversely impact the Wyoming pocket gopher. Rather, as noted by recent studies regarding the species, “it is unlikely that Wyoming pocket gophers are threatened by factors that can affect pocket gophers in more agriculturally-active areas.” BEAUVAS AND DARK-SMILEY, pg. 20. The Petition fails to present any information indicating that residential, recreational or farming operations have or may impact the species. Similarly, there is no indication that lethal control measures are being used on Wyoming pocket gophers or that the use of control measures is remotely contemplated.

III. Listing is Not Warranted Due to Disease or Predation

There is no indication that disease poses a threat to Wyoming pocket gopher populations. “The literature does not suggest the disease is a major factor in pocket gopher persistence.” BEAUVAS AND DARK-SMILEY, pg. 21. The Petition offers little more than anecdotal information regarding the impacts of endoparasites on an entirely different species. The allegations to the contrary in the Petition are based on entirely different species in an area completely removed from the expected range of the Wyoming pocket gopher and have no relevance, especially from a scientific perspective. *See* Petition, pgs. A1, 47 - 48. The Petition admits that predation is not likely a threat to the Wyoming pocket gopher, Petition, pg. 48, and this fact is confirmed by the relevant literature regarding the species. BEAUVAS AND DARK-SMILEY, pg. 21.

IV. Inadequacy of Existing Regulatory Mechanisms

Both the BLM and the Forest Service have identified the Wyoming pocket gopher as a sensitive species. BLM Manual 6840 Special Status Species Management § 6840.2.C (Rel 6-125 12/12/2008); Forest Service Manual 2600, Chapter 2670.22 (WO Amendment 2600-2005-1 09/23/2005). On BLM-administered lands, the BLM is required to manage sensitive species and their habitats to minimize or eliminate threats affecting the status of the species. BLM Manual 6840 Special Status Species Management § 6840.2.C. In order to implement this directive, the agency is required to determine, to the extent practicable, the distribution, abundance, populations' conditions and habitat needs of a sensitive species. *Id.* Additionally the BLM is required to ensure that BLM activities, including the approval of oil and gas projects, are carried out consistent with the objectives for protecting sensitive species. *Id.* For example, the recently approved Record of Decision for the Atlantic Rim Natural Gas Field Development Project included a specific provision requiring surveys for all threatened, endangered, candidate, and BLM sensitive species prior to ground disturbing activities. Atlantic Rim ROD, pg B-15. The Final Environmental Impact Statement for the Atlantic Rim Natural Gas Development Project specifically identified the Wyoming pocket gopher as a BLM sensitive species potentially occurring within the Atlantic Rim Project Area. Final Environmental Impact Statement for the Atlantic Rim Natural Gas Development Project, pgs. 3-110, 4-89. The Final EIS also indicated that if "populations are found, mitigation would be developed to protect them." *Id.* at 4-89. This conclusion demonstrates that the BLM is aware of the potential impacts of oil and gas development to the species and is taking affirmative steps to protect the Wyoming pocket gopher. There is no reason to believe the BLM will not develop and impose other reasonable restrictions in the Continental Divide-Creston Natural Gas Development Project Area.

More recently, the BLM completed a new Resource Management Plan that guides future BLM activities in all of Carbon County and a significant portion of Sweetwater County, Wyoming. The newly approved Rawlins RMP notes the potential for Wyoming pocket gophers within the area and describes general management goals and objectives to protect the species. *See* Proposed Resource Management Plan and Final Environmental Impact Statement for the Rawlins Field Office (BLM 2008), pg. 3-159; Rawlins RMP, pgs. 2-52, 2-54 – 2-55. The new RMP requires the BLM to manage or restore habitat to conserve, recover, and maintain populations of BLM State Sensitive Species, including the Wyoming pocket gopher. Rawlins RMP, pg 2-52. The Rawlins RMP further directs that all "[s]urface disturbing and disruptive activities will be intensively managed to minimize impacts on identified crucial habitat for sensitive species for the purpose of protecting these species and their associated habitat." Rawlins RMP, pg. 2-55. Because the Rawlins RMP was not released until December of 2008, the new, unequivocal management considerations were not referenced in the Petition, but should be considered by the Service.

The Service should not forget that oil and gas development does not take place without additional, site-specific analysis. As the Service is aware, individual Applications for Permits to

Drill (APDs) are subject to additional environmental analysis as required by the National Environmental Policy Act of 1969 (NEPA) and BLM's regulations. *See* 43 C.F.R. §§ 3162.3-1(a), 3162.5-1(a). Operations will only be approved after on-site visits and the application of appropriate best management practices. Onshore Order No. 1, 72 Fed. Reg. 10308, 10329 (Mar. 7, 2007). The individual onsite reviews conducted by trained BLM biologists provide an opportunity for potential pocket gopher habitat to be located and avoided to the extent possible and appropriate mitigation measures to be imposed as conditions of approval.

The Petroleum Association of Wyoming funded a survey for the Wyoming pocket gopher during the summer of 2008 to gain additional information regarding the potential distribution of the species. *See* HAYDEN-WING ASSOCIATES, LLC, Wyoming Pocket Gophers (*Thomomys clussius*) Surveys in South-Central Wyoming (November 2008). Additional field surveys will take place in the summer of 2009. KEINATH AND GRISCOM, Pocket Gopher Surveys in Southwestern Wyoming 2008 Progress Report, pg. 3. As required by the Rawlins RMP, the ongoing environmental impact statement for the Continental Divide-Creston Natural Gas Development Project will specifically analyze the potential impacts of oil and gas development on a wide variety of wildlife, including the Wyoming pocket gopher. As recognized by the Service, there is absolutely no documentation to support the Petitioners' suggestion that agencies are ignoring sensitive species management to the degree that regulatory mechanisms are inadequate. 74 Fed. Reg. 6558, 6562. Current BLM practices and policies are adequate to protect the Wyoming pocket gopher.

V. Other Natural or Man-made Factors Affecting the Species' Continued Existence

A. Vulnerability of Small Populations

Admittedly, the Wyoming pocket gopher inhabits a globally insignificant range and an apparently limited population. However, this fact alone does not demonstrate the need to list the Wyoming pocket gopher. The Petition fails to present any actual evidence regarding threats to the Wyoming pocket gopher from demographic, environmental, or genetic stochastic events. "However, the Wyoming pocket gopher has evidentially persisted for some period of time and may never have had a large population size." 74 Fed. Reg. 6558, 6562. The literature regarding the species has long recognized its limited range and small population. KEINATH AND BEAUVAIS, pg. 12. The Petition fails to provide any specific information or studies demonstrating a significant risk to the Wyoming pocket gopher because of its limited population and range. In fact, even the statements supporting the criterion are vague and ambiguous. For example, on page 20 the Petition suggests flooding "could potentially impact the species." Such vague allegations are not sufficient to support a listing decision.

B. Climate Change and Stress

The Petition states, again without evidence or support of any kind, that global climate change may have an impact upon the Wyoming pocket gopher. Because the Petition fails to provide any specific information regarding how global climate change may impact the species, the Service need not consider climate change as a factor for listing the species. Similarly, the Petition fails to demonstrate how “stress” may impact the species in a manner distinct from those events described above, namely the potential loss of habitat from oil and gas development. As described above, current BLM policies and practices are adequate to protect Wyoming pocket gopher habitat from oil and gas activities.

CRITICAL HABITAT IS NOT DETERMINABLE AT THIS TIME

Although the Service is generally required to designate critical habitat at the time a species is listed, the Service may defer the designation of critical habitat when it is not prudent to do so or when critical habitat is not determinable. 15 U.S.C. §§ 1533(a)(3), (b)(6)(C); 50 C.F.R. § 424.12(a). Critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. 50 C.F.R. § 424.12(a)(2). At this point in time, even if the Service determines to list the Wyoming pocket gopher as threatened or endangered under the ESA, the agency should not designate critical habitat because of the lack of information regarding the biological needs of the species. As the Service is aware, there is little published literature or studies regarding the Wyoming pocket gopher. Nonetheless, said studies are unanimous in their conclusion that there is little information regarding the habitat use and needs of the Wyoming pocket gopher. “Considering that very little information is known regarding pocket gopher habitat use in general it is hard to say what may constitute a suitable landscape pattern for Wyoming pocket gophers.” KEINATH AND BEAUVAIS, PG. 17 (emphasis added); *see also* BEAUVAS AND DARK-SMILEY, pg. 9.

In general it is assumed Wyoming pocket gophers occupy dry, gravelly, shallow-soil ridge tops. KEINATH AND BEAUVAIS, pg. 13. More recent information demonstrates that Wyoming pocket gophers do not exclusively occupy ridge-tops and may be found in a broader area, although not usually valley bottoms. KEINATH AND GRISCOM, pg. 2. New studies conducted during 2007 and 2008 now indicate that the vegetation composition and structure and soil type may be more important in determining habitat. Specifically, the species prefers soils with a substantial rock component, but rarely clay. *Id.* The species prefers areas without big sagebrush and a large component of cushion plants, grass, and forbs. *Id.* “However, the paucity of information requires extreme caution when interpreting habitat patterns, as they [Wyoming pocket gophers] may be responding to subtle factors of soil texture or vegetation that are not apparent based on scant available information.” KEINATH AND BEAUVAIS, pg. 21. The acknowledged experts regarding the species have unequivocally stated that they cannot identify habitat for the Wyoming pocket gopher given the existing state of information. “Given the

incredible lack of knowledge regarding the Wyoming pocket gopher, it is very difficult to suggest how habitat should best be conserved; we do not even have a good understanding of what suitable habitat is." KEINATH AND BEAUVAIS, pg. 25. The lack of knowledge, coupled with plans for further study during 2009 dictates that the Service must defer its designation of critical habitat, even if it determines a listing is warranted.

Studies conducted during 2008 demonstrate the inaccuracy of existing models of Wyoming pocket gopher habitat, only fifty percent (50%) of Wyoming pocket gophers trapped and recorded in the 2008 Hayden-Wing studies were located in areas with a high predicted presence for the species, although all the individuals were captured in areas predicted to potentially have the species. HAYDEN-WING ASSOCIATES, pg. 3. Given this remarkably low success rate, additional information is required to accurately determine the potential critical habitat for the species. Without additional information, the Service may designate an excessive amount of critical habitat thereby stifling economic development or, worse yet, fail to designate the appropriate habitat necessary to protect the species, should a listing be necessary. The Service should delay the designation of critical habitat until additional studies can be performed to better identify critical habitat. 16 U.S.C. § 1533(b)(6)(C). At this point in time, critical habitat is simply not determinable. 50 C.F.R. § 424.12(a)(2).

CONCLUSION

Anadarko encourages the Service not to list the Wyoming pocket gopher as threatened or endangered at this time. The species has existed in its limited range for decades despite oil and gas development and similar activities. There are no other clearly identified threats to the species from overuse, disease or predation, or other factors. Anadarko appreciates the opportunity to submit this information in response to the Service's information requested related to the status review of the Wyoming pocket gopher and looks forward to a 12-month finding from the Service on the petition to list the Wyoming pocket gopher.

Sincerely,

Thomas H. Clayson